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Practitioner's Docket No. 76109.01001

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John I. Ykema

Application No.: 09/213,099

Group No.: 2841

Filed: December 17, 1998

Examiner: T. Phan

For: POWER NODE CONTROL CENTER

Box Non-Fee
Assistant Commissioner for Patents
Washington, D.C. 20231

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TRANSMITTAL LETTER

1. Transmitted herewith is a supplement response to restriction requirement for this application.
2. No additional fee for claims is required.

FEE DEFICIENCY

3. If any additional fee for claims is required, charge Account No. 50-1943.

Date: March 11, 2002

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(Amendment Transmittal--page 1 of 5)

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Date: March 11, 2002



Darlene Dickinson



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Response
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Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

SUPPLEMENTAL RESPONSE TO RESTRICTION REQUIREMENT

INTRODUCTION

This is submitted to supplement a response dated 13 February 2002 which addressed an office action having no paper designation number but dated 14 January 2002 in which the examiner required restriction of the claimed subject matter disclosed in the above-referenced patent application. In the 13 February 2002 paper, applicant through undersigned counsel traversed the restriction requirement in all of its respects, requested reconsideration and withdrawal of the requirement for restriction and further requested a prompt and thorough examination of all of the claims pending in the application, on their merits.

Applicant submits this supplement to the response in order to cite administrative authority from the current edition of the Manual of Patent Examining Procedure which

differs slightly from the authority taken from the prior edition of the Manual of Patent Examining Procedure and cited in the paper dated 13 February 2002. Additionally, applicant submits this paper to bring further to the examiner's attention an error in the restriction requirement respecting the alleged distinctness of the inventions among which restriction was required and still further to focus attention on the severe economic penalty applicant will pay if the restriction requirement continues to stand.

THE ERROR IN FINDING DISTINCTNESS

In levying the restriction requirement, the examiner divided the claims pending in the application into four groups. The examiner asserted that group 1 embraced claims 1-26, 35 and 52-74 which were purportedly drawn to "an electric control module power nodes" (sic) which the examiner asserted to be classified in class 361, subclass 685.

The examiner asserted group 2 to embrace claim 75, which was purportedly drawn to a "power node control center" which the examiner contended to be classified in class 307, subclass 43.

The examiner asserted group 3 to embrace claims 27-33, 36-45, 48-51 and 76-79 which were drawn to a "power bus backplane" and supposedly classified in class 361, subclass 752.

The examiner further asserted that group 4 embraced claims 46 and 47 which were purportedly drawn to a "module" and would be classified in class 361, subclass 679.

The independent claims the examiner asserted to be in group 1, namely claims 1, 25, 26 and 52, broadly claim modular power control nodes having a backplane and functional modules connecting to the backplane. Claims 1, 25 and 52 recite these

features explicitly; claim 26 is directed to a power bus backplane and recites certain bus connectors.

Claim 75, which the examiner asserted to be drawn to a power node control center and hence to be in group 2, also recites a backplane and functional modules. Hence, claim 75 is broadly directed to the same subject matter as claims 1, 25 and 52 and, arguably, 26.

Claim 76, which is the only independent claim in group 3, is directed to a power bus backplane and also includes bus connectors with terminals for receiving modules as recited in independent claims 1, 25 and 52 of group 1, as well as in independent claim 46 of group 4.

Claim 46 is the independent claim in the examiner's group 4 and recites a module for use with a backplane and having terminals to connect to the backplane.

The examiner then asserted that the claims in these four groups defined inventions which were purportedly "distinct". In support of his contention that the groups into which the claims had been segregated defined distinct inventions, the examiner presented some perfunctory, highly conclusory examples which, in the examiner's view, supported the examiner's restriction requirement.

Before addressing those examples, applicant respectfully notes that the test for whether inventions are "distinct" is a two prong test: The term "distinct means that two or more subjects as disclosed are related...but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER". MPEP 802.01. (emphasis in the original)

The examiner asserted that the inventions of groups 1 through 3 and 4 were related as subcombinations disclosed as being usable together in a single combination. The examiner then contended that the subcombinations “are distinct from each other if they are shown to be separately usable.” Notably, the examiner made **no reference whatsoever** to the second prong of the distinctness test, namely whether the inventions defined by each one of the separate groups of claims are novel and unobviously patentable respecting the other groups of claims.

In support of the distinctness position, the examiner then speculated that the claims of group 1 had “separate utility such as electrical module not using the power node control center” defined by the claims of group 2, nor “the power bus backplane” defined by the claims of group 3 nor “the specific module design” defined by the claims of group 4.

Respecting the inventions defined by the claims of group 2, the examiner speculated that these inventions had “separate utility such as a power node control center not using the electrical module” defined by the claims of group 1, not using the “power bus backplane” defined by the claims of group 3 and not using the “specific module design” defined by the claims of group 4.

Similarly, the examiner speculated that the claims of group 3 had separate utility “such as the power bus backplane not using the electrical module” defined by the claims of group 1, not using the “power node control center” defined by the claims of group 2 and not using the “specific module design” defined by the claims of group 4.

The examiner further speculated that the claims of group 4 had separate utility “such as a module design not using the electrical module” defined by the claims of group

1, not using “the power node control center” defined by the claims of group 2 and not using “the power bus backplane” defined by the claims of group 3.

In support of all of this, the examiner cited MPEP 806.05(d) which states that two or more claimed subcombinations which are disclosed as being usable together in a single combination “are usually distinct from each other” if they can be shown to be separately usable. It should be specifically noted that MPEP 806.05(d), on which the examiner based his distinctness position, addresses only the “separately usable” first prong of the two prong test for distinctness; **MPEP 806.05(d) is silent respecting the second prong of the distinctness test, namely whether the inventions defined by the claims at issue are patentable over each other.**

Applicant is not necessarily in agreement with the examiner that the inventions defined by the claims, as segregated into the four groups which the examiner has defined, represent groups of inventions which are usable alone, without using any of the inventions defined by the claims of another one of the four groups. It is not at all apparent to applicant that the “electrical control module power nodes” (the examiner’s characterization of the claims placed into group 1) have any utility whatsoever without a power bus backplane, which is the examiner’s characterization of the claims placed into group 3. It further is not at all apparent to applicant that something other than “electrically control module power nodes” (the examiner’s characterization of the claims placed into group 1) could be used to define a “power node control center” which is the subject matter of claim 75 placed by the examiner into group 2.

Claim 1 in its current form recites “an electrical modular power node” which is recited to include “a power bus backplane” and “a plurality of functional modules”

having a “connector for connection to a bus bar” of the backplane. Claim 1 is silent respecting any other power connection means. Hence, for purposes of restriction analysis it must be concluded that the invention defined by claim 1 would have utility only with a power bus backplane, which is the subject of the claims of group 3, since the node has to receive power in order to function and power would be available only from the power bus backplane (no other power supply element or source is recited). Accordingly, applicant respectfully submits that the examiner has not made an adequate showing of the purported separate utility of the claims of group 1 and group 3.

Applicant further notes that claim 46, which is the independent claim in group 4, specifically recites “a module **for use in connection with** a power bus backplane node...”. Hence, by its very language, the “module” defined by claim 46 must be used with or as a part of “a power bus backplane node”. The examiner has correctly noted that the claims of group 3 are drawn to a power bus backplane. Applicant notes that the claims of group 4, on their face, specifically require that the modules defined by those claims be used with a power bus backplane. Hence, the invention defined by the claims of group 4 are not usable by themselves but must be used with a power bus backplane as recited in the claims of group 3. Accordingly, applicant respectfully submits that the examiner erred in contending that there are separate uses for the claims of group 4 and group 3.

Applicant respectfully submits that, for purposes of restriction analysis only and without prejudice to whatever position applicant may take on patentability in the course of prosecution of the claims on their merits, the claims in the four groups into which they have been segregated by the examiner may not be patentable over one another. Without

prejudice to that position, applicant respectfully notes that whether or not the claims of the respective four groups are patentable over one another, it is the examiner's burden to show lack of patentability of the groups of claims vis-à-vis one another in order to satisfy the second prong of the distinctness test. Applicant respectfully notes that the restriction requirement is silent respecting the patentability of any claim, in any one of the four groups of claims, vis-à-vis any claim in any of the other three groups.

Applicant notes that there are many common elements shared by the independent claims the examiner segregated into separate, purportedly "distinct", groups. For example, independent claim 1 recites both a backplane and functional modules and has been assigned by the examiner to group 1. Independent claim 75, which the examiner contends defines group 2, similarly recites a backplane and functional modules. With these two claims broadly reciting common subject matter, i.e. backplane and functional module elements, applicant respectfully submits it is probably unlikely, for purposes of restriction analysis, that the two claims are patentably unobvious vis-à-vis one another. There has been no showing of the same by the examiner, which showing is a prerequisite for a holding of distinctness and hence maintenance of the restriction requirement as between the claims of group 1 and group 2.

Similar conclusions follow from analyzing elements of others of the independent claims, notably independent claim 76 (segregated by the examiner into group 3) vis-à-vis independent claim 75 (contended by the examiner as defining group 2 by itself). Both claims recite "backplanes" with "bus bars" or "bus connectors". This being the case, applicant respectfully submits, without prejudice and for restriction purposes analysis

only, it is probably unlikely that claims 75 and 76 are unobviously patentable one over another.

For the foregoing reasons, applicant respectfully submits that the examiner's restriction requirement is erroneous, does not meet the controlling criteria for a finding of distinctness and should be withdrawn.

The examiner has further based the distinctness position on an assertion that the inventions defined by the four segregated groups of claims are distinct because they purportedly "have acquired a separate status in the art as shown by their different classification...". Applicant respectfully submits that this bald conclusion does not support a finding of distinctness. Classification in the sense used by the examiner relates to where the patents, which might issue containing such claims, would be classified. Asserting that the patents would be differently classified presumes that the claims of the prospective patents would be patentably distinct one from another. However, as demonstrated above, there has been no showing by the examiner of patentable unobviousness among the four groups of claims. Without a showing of patentable unobviousness among the four groups of claims, the assertion that the claims in the four groups, were they to issue in different patents, would be in four different classes is unsupported speculation.

Further respecting the issue of classification, applicant respectfully submits that the examiner erred in postulating that a patent issuing for the claims in group 1 would be classified in class 361, subclass 685: Applicant respectfully notes that subclass 685 of class 361 is entitled "Disk Drive Support" and, according to the Manual of Patent Classification, is the subclass: "subject matter wherein at least one electronic component

is a device that rotates a storage medium, writes data onto it, and reads data from it as instructed by a program combined with housing or mounting arrangement.”¹ Applicant respectfully notes that none of the claims at issue in the instant application, in any of the four groups, recite anything relating to any “disk drive support” nor do any of the claims explicitly recite or implicitly suggest any device “that rotates a storage medium, writes data onto it, and reads data from it as instructed by a program combined with housing or mounting arrangement” as in the definition for subclass 685 of class 361. Accordingly, applicant respectfully submits that the examiner has erred in contending that the claims of group 1, were those claims to issue as a patent, would be classified in subclass 685 of class 361. Reconsideration of this finding is respectfully solicited.

The examiner has also asserted that the claims defining the four groups of the invention are distinct because they purportedly “have acquired a separate status in the art because of their recognized divergent subject matter...”. Applicant respectfully submits there has been no showing of any divergent subject matter. Indeed, a straight-forward reading of the claims reveals that there are many, many elements which are common to the claims of the four groups, as discussed generally above. There has not been a showing of the claims defining the inventions of the four groups having acquired any separate status in the art or having been recognized by anyone as presenting “divergent” subject matter. Indeed, all of the claims in all of the groups are broadly directed towards power distribution using a control center defining a power node and a power bus backplane providing power to and/or taking power from that node. Applicant respectfully submits that far from presenting “divergent” subject matter, the claims

¹ A photocopy of the pertinent portion of class 361 with the class definition for subclass 685 from the Manual of Classification is attached as Appendix A.

arguably could better be characterized as presenting “convergent” subject matter. All of the claims could certainly be considered to converge towards a power node control center connected to and including a power bus backplane.

THE REQUIRED SCOPE OF THE SEARCH

The most salient consideration for insisting upon restriction and determining the propriety of a restriction requirement is the scope of the examiner's search for prior art. Applicant is entitled to a full and thorough search of the prior art as a consequence of having filed his application and having paid the statutory application fee:

The director shall cause an examination to be made of the application and the alleged new invention; and if on such examination it appears that the applicant is entitled to a patent under the law, the director shall issue a patent therefor. 35 U.S.C. 131

Restriction is proper only where an examiner would be unduly burdened by searching numerous, unrelated inventions or technologies. The scope of a search for related inventions, even though possibly burdensome, cannot by itself justify restriction of related inventions. If an application includes claims to related inventions which are distinct or independent inventions, the examiner **must** examine the application on its merits, in its entirety, if the search and examination of the entire patent application can be made without a serious burden on the examiner:

If the search and examination of **an entire application** can be made without serious burden, the examiner **must examine it on the merits, even though it includes claims to independent or distinct inventions**. MPEP 803.

In developing a search strategy and mapping the scope of a search, claims are to be given their broadest reasonable interpretation, both literally and by equivalents:

All subject matter that is the equivalent of the subject matter as defined in the claim, even through specifically different from the definition in the

claim, must be considered unless expressly excluded by the claimed subject matter. MPEP 904.01(b)

The examiner will not be unduly burdened by searching and examining all of the claims presented by Applicant in a single application. The examiner's search will not be narrowed or reduced by compliance with the restriction requirement, since Applicant has clearly manifested his intent to claim each novel and nonobvious aspect of the disclosed functional module and power bus backplane subject matter in a power node control center as evidenced by the claims in the application.

In this regard, applicant's claim 1 recites a modular power node which includes a power bus backplane and a plurality of functional modules. Claim 75 defining group 2 is addressed to a power node control center including a power bus backplane and a plurality of functional modules. The power bus backplane language appears again in the claims of group 3 with these claims all being directed to a power bus backplane either alone or in combination with other structure. The claims of group 4 recite a module for use in connection with a power bus backplane. Hence, claims in each of the four groups recite modules and power bus backplanes thereby effectively defining the scope of the search which should be performed relevant to the patentable novelty and unobviousness of the invention. Clearly, a search respecting any of the four groups of claims must encompass the appropriate classes and subclasses for the functional module component of the power node control center and the appropriate classes and subclass for the power bus backplane component of the power node control center.

The examiner's instructional guidelines for performing a search for any application are set forth in the MPEP. The guidelines require the examiner to search in

classes and subclasses in which arguably distinct (as defined by the MPEP) inventions would be classified:

"Not only must the art be searched with which the invention claimed is classifiable, but **also all analogous arts regardless of where classified.**

The determination of when arts are analogous is at times difficult. It depends upon the necessary essential function or utility of the subject matter covered by the claims, and not upon what it is called. MPEP 904.01(c) (emphasis added).

A proper field of search normally includes the subclass in which the claimed subject matter of an application would be properly classified...

In outlining a field of search the examiner should note every class and subclass under the U.S. Patent Classification system and other organized systems of literature, **that may have material pertinent to the subject matter as claimed.** Every subclass, digest and cross reference art collection pertinent to each type of invention claimed should be listed, from the largest combination through the various subcombinations to the most elementary part. **The search should extend to all probable areas relevant** to the claimed subject matter and should cover the disclosed features which might reasonably be expected to be claimed. MPEP 904.02(a) (emphasis added).

It is a prerequisite to a speedy and just determination of the issues involved in the examination of an application that a careful and comprehensive search, commensurate with the limitations appearing in the most detailed claims in the case, be made in preparing the first action ... It is normally not enough that references be selected to meet only the terms of the claims alone, especially if only broad claims are presented; **but the search should, insofar as possible, also cover all subject matter which the examiner reasonably anticipates might be incorporated into applicant's amendment.** MPEP 904.03, ¶ 1 (emphasis added)

In doing a complete search, the examiner should find and cite references that, while not needed for treating the claims, would be useful for forestalling the presentation of claims to other subject matter regarded by applicant as his or her invention, by showing that this other subject matter is old or obvious. MPEP 904.03 ¶ 2

In selecting the references to be cited, the examiner should carefully compare the references with one another and with the applicant's disclosure... MPEP 904.03 ¶ 3.

From the above-quoted guidelines, it is clear that the scope of a proper search includes:

- (1) Classes and subclasses in which the claimed subject matter is classified; this means that classes and subclasses in which functional modules and power bus backplanes are classified must be searched;
- (2) Classes and subclasses that may have material pertinent to the claimed subject matter; this means that classes and subclasses having material pertinent to functional modules and power bus backplanes, such as devices for connecting modules to power bus backplanes, must be searched;
- (3) Classes and subclasses containing subject matter present in the disclosure which might reasonably be expected to be claimed during the prosecution; this means designs for such modules and power bus backplanes must be searched; and
- (4) Classes and subclasses that may contain subject matter disclosing material related to features which might reasonably be expected to be claimed; this means classes for particular power bus bars must be searched.

The various disclosed and claimed structures, namely the functional modules, backplane, bus bars, control modules, power node control center, etc. are interrelated, work together and merit patent protection. They are all directed to a common technology, namely control and regulation of electrical power by functional modularly constructed nodes working together with power bus backplanes via which power is supplied and delivered, principally but not exclusively for shipborne applications. The claims stem from a set of core inventive concepts, namely modular construction of nodes performing control and power modification and monitoring tasks, receiving power from and supplying power to a bus via a connection backplane.

As demonstrated above, no matter which group of claims is examined, the search must embrace functional modules and power bus backplanes defining the power node

control center subject matter. Accordingly, the searches performed by the examiner will be essentially identical regardless of which group of claims the examiner initially searches. As such, it would waste of time, money and energy to perform the same search, namely a search in the classes and subclasses for functional modules and in the classes and subclasses for power bus backplanes, which together essentially define the power node control center, four times. This alone should be sufficient reason for the examiner to reconsider and withdraw the restriction requirement and to proceed with a meritorious examination of all of the claims pending in the application.

THE PROPOSED RESTRICTION WOULD BE UNDULY ECONOMICALLY BURDENSOME ON APPLICANT

While the Patent and Trademark Office has a legitimate interest in obtaining proper revenue from filing, issuance and maintenance fees, it does not have unrestrained power to tax inventors or the entrepreneurial enterprises employing them. Applicant is entitled to obtain patent protection on each of the nonobvious inventive aspects of the subject matter which applicant has disclosed. If the applicant is forced to divide this application into four separate patent applications as suggested by the examiner, this will be unduly and unfairly burdensome to the applicant due to the extra fees and costs associated with prosecuting and maintaining three additional patents.

Table 1 sets forth the divisional application filing costs which would be incurred by the applicant in the event the restriction requirement stands:

TABLE 1: DIVISIONAL APPLICATION FILING COST

Group Number	I	II	III	IV
Independent Claims	5	1	1	1
Excess Independent Claims	2	0	0	0

Excess Independent Claim Fee	168.00	0	0	0
Total Claims	49	1	25	2
Excess Claims	29	0	5	0
Excess Claims Fee	327.00	0.00	90.00	0.00
Basic Filing Fee	740.00	740.00	740.00	740.00
Total Filing Fee	1,225.00	<u>740.00</u>	<u>830.00</u>	<u>740.00</u>
Excess Filing Fees		{	2,310.00	}
Already Paid by Applicant at Filing		1,142.00		
Already Paid by Applicant to Add Claims 52-79		744.00		
Filing & Claims Fees Paid by Applicant to Date		1,886.00		

As can be seen from Table 1, Applicant will be forced to pay additional filing fees in the amount of \$2,310.00 in the event the restriction requirement is not withdrawn.

As further indicated on Table 1, Applicant has already paid \$1,886.00 in filing and claims fees to date. If Applicant is forced to adhere the restriction requirement, approximately \$1,200.00 of this will be forfeited since three of the independent claims and twenty-eight claims in total will not be examined in the instant application despite the fact that applicant has paid the filing fee therefor. Indeed, applicant will be forced to pay \$2,310.00 additional to secure examination of the three extra independent claims and the twenty-eight total extra claims for which applicant has already paid. Hence, applicant will pay an initial, non-recoverable penalty of about \$2,900.00 in the event applicant is required to adhere to the outstanding restriction requirement.

Table 2 presents the patent issue fees and maintenance costs applicant will face in the event the restriction requirement stands and applicant is successful in prosecuting the parent application and three divisional applications to allowance:

TABLE 2: PATENT MAINTENANCE COST

Number of Patents	1	2	3	4
Issue Fee	1,280.00	2,560.00	3,840.00	5,120.00
1 st Maintenance Fee	880.00	1,760.00	2,640.00	3,520.00
2 nd Maintenance Fee	2,020.00	4,040.00	6,060.00	8,080.00
3 rd Maintenance Fee	3,100.00	6,200.00	9,300.00	12,400.00
TOTAL	8,280.00	16,560.00	24,840.00	33,020.00

From Table 2 it is apparent that applicant will face issue and maintenance fees amounting to \$24,840.00 extra, over and above the cost to issue and maintain a single patent directed to the invention, if the restriction requirement stands. When this figure is combined with the figures discussed above, the total financial penalty applicant faces in just official fees amounts to about \$27,000.00 as a result of the restriction requirement. Applicant respectfully submits that applicant should not be burdened in this manner and that the restriction requirement should be reconsidered and withdrawn in its entirety.

Applicant further submits that the restriction requirement will be further burdensome on applicant since it is expected that off-shore patent offices will likely follow any lead of the United States Patent and Trademark Office in requiring restriction of the counterpart pending foreign applicants. It is quite common for foreign patent offices to inquire as to the action(s) taken by the United States Patent and Trademark Office in connection with the counterpart U.S. application, especially where the inventor is a citizen of the United States and, as a result, the U.S. application is timewise ahead of

the foreign applications in actual filing date and prosecution activity. Applicant has filed a number of counterpart foreign applications including in the European Patent Office and in Japan. If the European Patent Office and the Japanese Patent Office consider the action of the examiner to set a restriction precedent for the counterpart European and Japanese patent applications, applicant will be further economically penalized by being forced to pay additional filing, prosecution, issue and maintenance fees in Europe and Japan for patent protection for the instant invention. This is another reason mandating reconsideration and withdrawal of the restriction requirement.

**THE PATENT OFFICE'S RESPONSIBILITY IS PUBLIC SERVICE,
NOT REVENUE GENERATION**

While applicant recognizes the Patent and Trademark Office interest in obtaining proper revenue from filing and issuance fees, the Patent and Trademark Office is not in the business of assisting the IRS in financing the war on terrorism or reducing the national debt. The sole function of the Patent and Trademark Office is to serve inventors and the public in an efficient and expeditious manner. The Patent and Trademark Office is charged with a duty to carry out its responsibility of examining patent applications thoroughly and efficiently. Efficient use of administrative resources and expeditious processing of this application will be better served by performing one comprehensive search, as contrasted to four largely, if not completely, overlapping searches of the functional module and power bus backplane arts.

CONCLUSION

For all of the foregoing reasons, applicant respectfully submits that the restriction requirement set forth in the paper dated 14 January 2002 is not well founded and should

be withdrawn. Applicant again requests prompt and thorough examination of all of the claims pending in the application.

Date: March 11, 2002

Respectfully submitted,



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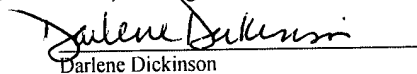
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Date: March 11, 2002


Darlene Dickinson